

Appendix H. Initial Regulatory Flexibility Analysis

Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions). The RFA is also intended to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct a regulatory flexibility analysis for each proposed rule. The regulatory flexibility analysis is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. In addition to analyses conducted for the RIR, the regulatory flexibility analysis provides: 1) A statement of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; 5) an identification, to the extent practical, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and, 6) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Additional information on the description of affected entities may be found in **Section 3.3**, and additional information on the expected economic effects of the proposed action may be found in **Chapter 4**.

Statement of Need for, Objectives of, and Legal Basis for the Rule

The purpose and need, issues, problems, and objectives of the proposed rule are presented in **Section 1.4**. The purpose of this proposed rule is to limit participation and effort in the commercial golden tilefish segment of the snapper grouper fishery; allocate the annual catch limit (ACL) between gear groups; and, modify or establish golden tilefish trip limits.

The need for this proposed rule is to reduce overcapacity in the golden tilefish portion of the snapper grouper fishery. This proposed rule would address issues that have arisen from a more stringent regulatory regime in the South Atlantic fisheries.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended, provides the statutory basis for this proposed rule.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule

No duplicative, overlapping, or conflicting Federal rules have been identified with this proposed rule.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule will Apply

This proposed rule is expected to directly affect commercial fishers in the South Atlantic snapper grouper fishery. The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

During 2005-2011, a total of 142 hook and line vessels with valid permits to operate in the commercial snapper grouper fishery landed golden tilefish. These vessels generated annual average dockside revenues of approximately \$69,000 (2010 dollars) from golden tilefish, or \$603,000 (2010 dollars) from all species, inclusive of golden tilefish, caught in the trip. On average then, each of these vessels generated about \$4,246 in gross revenues. During the same period, a total of 43 longline vessels with valid permits to operate in the commercial snapper grouper fishery landed golden tilefish. Their annual average revenues were about \$835,000 (2010 dollars) from golden tilefish, or \$1,218,000 (2010 dollars) from all species, inclusive of golden tilefish, caught in the trip. Each of these vessels, therefore, generated an average of approximately \$28,330 in gross revenues.

Based on revenue information, all commercial vessels affected by this proposed rule can be considered small entities.

Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

The proposed rule would not introduce any changes to reporting, record-keeping, and other compliance requirements which are currently required.

Substantial Number of Small Entities Criterion

The proposed rule is expected to directly affect all Federally permitted commercial vessels harvesting golden tilefish in the South Atlantic snapper grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the proposed action will affect a substantial number of small entities.

Significant Economic Impact Criterion

The outcome of “significant economic impact” can be ascertained by examining two issues: disproportionality and profitability.

Disproportionality: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?

All entities that are expected to be affected by this proposed rule are considered small entities, so the issue of disproportional effects on small versus large entities does not presently arise.

Profitability: Do the regulations significantly reduce profit for a substantial number of small entities?

The proposed rule consists of the following:

- Limit golden tilefish effort through a golden tilefish longline endorsement program
- To receive a golden tilefish longline endorsement, the individual must have an average of 5,000 pounds gw golden tilefish caught (with longline gear) for the best 3 years within the period 2006 through 2011
- Establish an appeals process for the golden tilefish endorsement program starting on the effective date of the final rule; the Regional Administrator will review, evaluate, and render final decisions on appeals
- Allocate the golden tilefish commercial ACL as follows: 75% to the longline sector and 25% to the hook and line sector
- Allow transferability of endorsements upon implementation of the program
- Modify the golden tilefish commercial trip limit by removing the 300 pound gw trip limit when 75% of the ACL is taken
- Establish a golden tilefish commercial trip limit of 500 pounds gw for commercial fishermen who do not receive a longline endorsement; vessels with longline endorsements are not eligible to fish for this trip limit.

Establishing a longline endorsement system would limit the expansion of capital and effort in the longline sector. Because this sector is by far the dominant segment in the commercial harvest of golden tilefish, an endorsement system could extend the commercial fishing season, thereby providing the industry opportunities to remain profitable. However, unlike the case with a management system that assigns harvesting privileges to fishermen, an endorsement system would not eliminate the underlying incentive to “race to fish.” With this incentive remaining intact, effort and capital stuffing would continue to increase over time and eventually shorten the fishing season.

The proposed criterion for a longline endorsement would qualify 24 longline vessels and disqualify 19 longline vessels. Qualifying vessels generated revenues of about \$788,000 (2010 dollars) annually from golden tilefish while non-qualifying vessels generated an average of about \$47,000 (2010 dollars) in annual revenues from golden tilefish. The decrease in revenues to non-qualifying vessels would be about 17% of their total revenues. They could switch gear and recoup part of their losses; nonetheless, their short-term profits would still likely to suffer. However, relative to the total profits of commercial vessels in the snapper grouper fishery, revenue and profit reductions to non-qualifying vessels would not be significant. In terms of revenues, a loss of \$47,000 would be about 3% of total revenues by vessels landing golden tilefish and less than 1% of total revenues by all commercial vessels in the South Atlantic. Moreover, losses to non-qualifying vessels would likely be gained by qualifying vessels. Considering the fishing season closures in recent years, qualifying vessels would most likely harvest whatever is forgone by non-qualifying vessels. This would increase the revenues and possibly profits of qualifying vessels and likely decrease the profits of non-qualifying vessels. Whether this would increase industry profits cannot be ascertained based on available information. It is possible that short-term industry profits would increase or at least not dissipate fast. With fewer participants in longline sector and noting that the longline sector is by far the dominant segment in the commercial harvest of golden tilefish, the fishing season for the longline sector could lengthen and thereby vessels could command better prices. These effects, however, would be transitory. The incentive to "race to fish" is still intact so that effort from qualifying vessels could increase in the medium- and long-term, eventually erasing any profit gains.

Establishing an appeals process for fishermen initially excluded from the golden tilefish longline endorsement would provide opportunities for those legitimately qualified to receive their endorsement. Given the narrow basis for appeals (e.g., landings reported on NMFS logbook records or state landing records), only a limited number of appeals would be successful.

Establishing a 75% longline and 25% hook and line allocation of the golden tilefish commercial ACL would ensure the continued presence of the hook and line sector in the commercial harvest of golden tilefish. Relative to the baseline, this allocation ratio would redistribute the harvest from the longline sector to the hook and line sector. This, in theory, would result in negative effects on the longline sector and positive effects on the hook and line sector. However, because the commercial quota is increased well above the baseline landings of both sectors, this allocation ratio would yield positive revenue effects to both sectors. Revenue gains would be \$302,000 to the hook and line sector and \$271,000 to the longline sector, or total revenue effects of about \$573,000. It is very likely that these positive revenue effects would translate to positive profit effects on both sectors.

Allowing transferability of golden tilefish longline endorsement between individuals or entities with Unlimited Snapper Grouper Permits would open opportunities for increasing the value of the endorsement asset and for the more efficient operators to engage in the fishery. Such opportunities, however, would still be limited by the requirement that transfers of endorsements be made between individuals/entities possessing unlimited snapper grouper permits. These permits are now under a limited entry program.

Eliminating the 300-pound commercial trips limit when 75% of the commercial ACL is taken would benefit longline vessels. This ratcheting down of the trip limit was intended to preserve the presence of the hook and line sector, but it is now unnecessary because the hook and line sector has its own separate allocation. Thus, this alternative would allow the longline sector, whose trips would likely be unprofitable under a 300-pound gw trip limit, to efficiently use its capacity and maximize its revenues and possibly profits from its allocation.

Establishing a 500-pound trip limit for commercial fishermen who would not receive a longline endorsement would affect 14 out of 249 trips based on average 2005-2011 data. This trip limit would reduce landings by about 24,000 pounds gw worth \$69,000 (2010 dollars). The effects of a trip limit are generally temporary--vessels incurring revenue reductions due to a trip limit could recoup their losses by taking more trips so long as those trips remain profitable. Considering the relatively few trips that would be affected, this trip limit would likely not be too constraining as to reduce the sector's overall profits.

Description of Significant Alternatives

Two alternatives, including the preferred alternative that would establish an endorsement system, were considered for limiting participation in the golden tilefish component of the snapper grouper fishery through an endorsement system. The only other alternative is the no action alternative. This would not limit effort in the commercial harvest of golden tilefish and thus would not address the evolving derby in the commercial sector.

Two alternatives were considered for establishing eligibility requirements for the longline endorsement. The first alternative, the no action alternative, would make the endorsement system ineffective in addressing increasing effort in the commercial sector because everyone with valid permits could receive an endorsement. The second alternative consists of 9 sub-alternatives, including the preferred sub-alternative, with each providing for an endorsement eligibility based on minimum amount of landings using longline during a given period. The first sub-alternative would require a minimum of 2,000 lb gw total longline landings during 2006-2008. The second sub-alternative would require a minimum of 5,000 lb gw total longline landings during 2006-2008. The third sub-alternative would require a minimum of 5,000 lb gw average longline landings during 2006-2008. The fourth sub-alternative would require a minimum of 5,000 lb gw average longline landings during 2007-2009. The fifth sub-alternative would require a minimum of 10,000 lb gw average longline landings during 2007-2009. The sixth sub-alternative would require a minimum of 5,000 lb gw average longline landings for the best 3 years during 2006-2010. The seventh sub-alternative would require a minimum of 5,000 lb gw average longline landings for the best 3 years during 2006-2011. The eighth sub-alternative would require a minimum of 10,000 lb gw average longline landings for the best 3 years during 2006-2011. Each of these sub-alternatives would qualify fewer entities for the endorsement and thus would result in greater forgone revenues than the preferred sub-alternative.

Three alternatives, including the preferred alternative, were considered for establishing an appeals process for fishermen initially excluded from the endorsement program. The first alternative, the no action alternative, would not establish an appeals process. This alternative has

the potential to unduly penalize participants due mainly to some errors in data reporting or recording. The second alternative is the same as the preferred alternative, except that it would additionally establish a special board composed of state directors/designees that would review, evaluate, and make individual recommendations to the Regional Administrator. This alternative would mainly introduce additional administrative burden that may not improve the appeals process considering that the only major issue subject to appeals is the landings record.

Four alternatives, including the preferred alternative, were considered for allocating the commercial golden tilefish ACL among gear groups. The first alternative, the no action alternative, would not specify an allocation among gear groups. With this alternative, the already diminished share of the hook and line sector in the harvest of golden tilefish would further decline. Consequently, further reductions in the sector's revenues and profits would occur, negating the Council's intent to minimize economic impacts on this sector. The second alternative would establish an 85% longline and 15% hook and line allocation, and the third alternative, a 90% longline and 10% hook and line allocation. These two other alternatives would favor the longline sector, but would allow the hook and line sector to continue its operations. Similar to the preferred alternative, the effects of these alternatives on overall industry profits cannot be determined based on available information.

Two alternatives, including the preferred alternative, were considered for allowing transferability of longline endorsements. The first alternative, the no action alternative, would not allow transfers of endorsements. This alternative would tend to limit the value of the endorsement asset and hinder the participation of potentially more efficient operators. The second alternative (preferred) includes two sub-alternatives, of which one is the preferred sub-alternative that would allow transfers of endorsement upon implementation of the program. The only other sub-alternative would not allow transfers of endorsements during the first 2 years of the program. This sub-alternative would mainly delay the entrance of more efficient operators and the generation of higher-valued endorsement assets.

Three alternatives, including the preferred alternative, were considered for modifying the golden tilefish trip limit. The first alternative, the no action alternative, would retain the 4,000 lb gw trip limit that would be reduced to 300 lb gw trip limit when 75% of the commercial ACL is reached. The trip limit reduction to 300 lb gw, which was established to preserve the presence of the hook and line sector, is no longer necessary with the establishment of a separate allocation for each gear group. The second alternative would prohibit longline fishing for golden tilefish when 75% of the commercial ACL is reached. This alternative is not necessary with the establishment of a separate allocation for each gear group. In addition, this would only constrain the profits longline vessels could derive from the harvest of golden tilefish.

Six alternatives, including the preferred alternative, were considered for establishing a trip limit for fishermen who do not receive a longline endorsement. The first alternative, the no action alternative, would retain the 4,000 lb gw trip limit that would be reduced to 300 lb gw trip limit when 75% of the commercial ACL is reached. The second alternative would establish a 300 lb gw trip limit; the third alternative, a 400 lb gw trip limit; the fourth, a 100 lb gw trip limit; and, the fifth alternative, a 200 lb gw trip limit. Relative to the preferred alternatives, all these other

trip limits would be more restrictive and thus would likely result in larger reductions in vessel revenues and profits per trip.

The Council also considered four alternatives to adjust the golden tilefish fishing year for which they chose the no action alternative. The first alternative, the no action alternative, would retain the existing calendar year as the golden tilefish fishing year (January 1 through December 31). The second alternative would specify a fishing year of September 1 through August 31; the third alternative, August 1 through July 31; and, the fourth alternative, May 1 through April 30.